(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* ORTIZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 73–2050. Argued February 18, 1975—Decided June 30, 1975

The Fourth Amendment forbids Border Patrol officers, in the absence of consent or probable cause, to search private vehicles at traffic checkpoints removed from the border and its functional equivalents, and for this purpose there is no difference between a checkpoint and a roving patrol. *Almeida-Sanchez* v. *United States*, 413 U. S. 266, followed. Pp. 2–8.

Affirmed.

POWELL, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, MARSHALL, and REHNQUIST, JJ., joined. REHNQUIST, J., filed a concurring opinion. BURGER, C. J., filed an opinion concurring in the judgment, in which BLACKMUN, J., joined, see No. 74–114. WHITE, J., filed an opinion concurring in the judgment, in which BLACKMUN, J., joined, see No. 74–114.

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SUPREME COURT OF THE UNITED STATES

No. 73-2050

United States, Petitioner, *v.* Luis Antonio Ortiz. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 30, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

Border Patrol officers stopped respondent's car for a routine immigration search at the traffic checkpoint on Interstate Highway 5 at San Clemente, California, on November 12, 1973. They found three aliens concealed in the trunk, and respondent was convicted on three counts of knowingly transporting aliens who were in the country illegally. The Court of Appeals for the Ninth Circuit reversed the conviction in an unreported opinion, relying on dictum in its opinion in *United States* v. *Bowen*, 500 F. 2d 960 (CA9 1974), aff'd, *post* p. —, to the effect that our decision in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973), required probable cause for all vehicle searches in the border area, whether conducted by roving patrols or at traffic checkpoints. We granted certiorari. 419 U. S. 824 (1974).

Nothing in this record suggests that the Border Patrol officers had any special reason to suspect that respondent's car was carrying concealed aliens. Nor does the Government contend that the San Clemente checkpoint is a functional equivalent of the border. Brief for the United States, at 16. The only question for decision is whether vehicle searches at traffic checkpoints, like the roving-patrol search in *Almeida-Sanchez*, must be based on probable cause.

I

In *Almeida-Sanchez* we rejected the Government's contention that the Nation's strong interest in controlling immigration and the practical difficulties of policing the Mexican border combined to justify dispensing with both warrant and probable cause for vehicle searches by roving patrols near the border. The facts did not require us to decide whether the same rule would apply to traffic checkpoints, which differ from roving patrols in several important respects. 413 U. S., at 273; *id.*, at 276 (MR. JUSTICE POWELL, concurring).

A consolidated proceeding on motions to suppress in this and similar cases produced an extensive factual record on the operation of traffic checkpoints in Southern California. *United States* v. *Baca*, 368 F. Supp. 398 (SD Cal. 1973). The San Clemente checkpoint is 62 air miles and 66 road miles north of the Mexican border. It is on the principal highway between San Diego and Los Angeles, and over 10 million vehicles pass the checkpoint in a year. *United States* v. *Martinez-Fuerte*, — F. 2d —, — (CA9 1975). The District Court in *Baca* described the checkpoint as follows:

> "Approximately one mile south of the checkpoint is a large black on yellow sign with flashing yellow lights over the highway stating 'All Vehicles, Stop Ahead, 1 Mile.' Three-quarters of a mile further north are two black on yellow signs suspended over the highway with flashing lights stating 'Watch for Brake Lights.' At the checkpoint, which is also the location of a State of California weighing station, are two large signs with flashing red lights suspended over the highway. These signs each state 'Stop Here—U. S. Officers.' Placed on the highway are a number of orange traffic cones funneling traffic into two lanes where a Border Patrol agent in full dress

uniform, standing behind a white on red 'Stop' sign checks traffic. Blocking traffic in the unused lanes are official U. S. Border Patrol vehicles with flashing red lights. In addition, there is a permanent building which houses the Border Patrol office and temporary detention facilities. There are also floodlights for nighttime operation." 368 F. Supp., at 410–411.

The Border Patrol would prefer to keep this checkpoint in operation continuously, but bad weather, heavy traffic, and personnel shortages keep it closed about one-third of the time. When it is open, officers screen all northbound traffic. If anything about a vehicle or its occupants leads an officer to suspect that it may be carrying aliens, he will stop the car and ask the occupants about their citizenship. If the officer's suspicion persists, or if the questioning enhances it, he will "inspect" portions of the car in which an alien might hide.[1] Operations at other checkpoints are similar, although the traffic at some is light enough that officers can stop all vehicles for questioning and routinely inspect more of them.

The Government maintains that these characteristics justify dispensing with probable cause at traffic checkpoints despite the Court's holding in *Almeida-Sanchez*. It gives essentially two reasons for distinguishing that case. First, a checkpoint officer's discretion in deciding

[1] Such places typically include the trunk, under the hood, and beneath the chassis. If the vehicle is a truck, a camper, or the like, the officer inspects the enclosed portion as well. But an immigration inspection is not always so confined. In *Almeida-Sanchez*, the officer removed the back seat cushion because there were reports that aliens had been found seated upright behind seats from which the springs had been removed. 413 U. S., at 286 (WHITE, J., dissenting).

which cars to search is limited by the location of the checkpoint. That location is determined by high-level Border Patrol officials, using criteria that include the degree of inconvenience to the public and the potential for safe operation, as well as the potential for detecting and deterring the illegal movement of aliens. By contrast, officers on roving patrol were theoretically free before *Almeida-Sanchez* to stop and search any car within 100 miles of the border. Second, the circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.

These differences are relevant to the constitutional issue, since the central concern of the Fourth Amendment is to protect liberty and privacy from arbitrary and oppressive interference by government officials. *Camara* v. *Municipal Court*, 387 U. S. 523, 528 (1967); *Schmerber* v. *California*, 384 U. S. 757, 767 (1966). The Fourth Amendment's requirement that searches and seizures be reasonable also may limit police use of unnecessarily frightening or offensive methods of surveillance and investigation. See, *e. g.*, *Terry* v. *Ohio*, 392 U. S. 1, 16–17 (1968); *Camara*, *supra*, at 531; *Schmerber*, *supra*, at 771–772. While the differences between a roving patrol and a checkpoint would be significant in determining the propriety of the stop, which is considerably less intrusive than a search, *Terry* v. *Ohio*, *supra*, they do not appear to make any difference in the search itself. The greater regularity attending the stop does not mitigate the invasion of privacy that a search entails. Nor do

checkpoint procedures significantly reduce the likelihood of embarrassment. Motorists whose cars are searched, unlike those who are only questioned, may not be reassured by seeing that the Border Patrol searches other cars as well. Where only a few are singled out for a search, as at San Clemente, motorists may find the searches especially offensive. See Note, Border Searches and the Fourth Amendment, 77 Yale L. J. 1007, 1012–1013 (1968).

Moreover, we are not persuaded that the checkpoint limits to any meaningful extent the officer's discretion to select cars for search. The record in the consolidated proceeding indicates that only about 3% of the cars that pass the San Clemente checkpoint are stopped for either questioning or a search, 368 F. Supp., at 411. Throughout the system, fewer than 3% of the vehicles that passed through checkpoints in 1974 were searched, Brief for the United States, at 29, and no checkpoint involved in *Baca* reported a search rate of more than 10% or 15%. 368 F. Supp., at 412–415. It is apparent from these figures that checkpoint officers exercise a substantial degree of discretion in deciding which cars to search. The Government maintains that they voluntarily exercise that discretion with restraint and search only vehicles that arouse their suspicion, and it insists the officers should be free of judicial oversight of any kind. Viewed realistically, this position would authorize the Border Patrol to search vehicles at random, for no officer ever would have to justify his decision to search a particular car.

This degree of discretion to search private automobiles is not consistent with the Fourth Amendment. A search, even of an automobile, is a substantial invasion of privacy.[2] To protect that privacy from official

[2] The degree of the invasion of privacy in an automobile search

arbitrariness, the Court always has regarded probable cause as the minimum requirement for a lawful search. *Almeida-Sanchez, supra,* at 269–270; *Chambers* v. *Maroney,* 399 U. S. 42, 51 (1970). We are not persuaded that the differences between roving patrols and traffic checkpoints justify dispensing in this case with the safeguards we required in *Almeida-Sanchez.* We therefore follow that decision and hold that at traffic checkpoints removed from the border and its functional equivalents, officers may not search private vehicles without consent or probable cause.[3]

The Government lists in its reply brief some of the factors on which officers have relied in deciding which cars to search. They include the number of persons in

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may vary with the circumstances, as there are significant differences between "an automobile and a home or office." *Chambers* v. *Maroney,* 399 U. S. 42, 48 (1970); *Almeida-Sanchez* v. *United States, supra,* at 279 (POWELL, J., concurring).

[3] Not every aspect of a routine automobile "inspection," as described in n. 1, *supra,* necessarily constitutes a "search" for purposes of the Fourth Amendment. There is no occasion in this case to define the exact parameters of an automobile "search."

Nor do we have occasion to decide whether a warrant could issue approving checkpoint searches based on information about the area as a whole, in the absence of cause to believe that a particular car is carrying concealed aliens, because the officers had no such warrant in this case and had not tried to obtain one. See *Almeida-Sanchez* v. *United States, supra,* at 275 (POWELL, J., concurring); *Camara* v. *Municipal Court, supra.* We also need not decide whether checkpoints and roving patrols must be treated the same for all purposes, or whether Border Patrol officers may lawfully stop motorists for questioning at an established checkpoint without reason to believe that a particular vehicle is carrying aliens. Cf. *United States* v. *Brignoni-Ponce, ante,* p. —. Nor do we suggest that probable cause would be required for all inspections of private motor vehicles. It is quite possible, for example, that different considerations would apply to routine safety inspections required as a condition of road use.

a vehicle, the appearance and behavior of the driver and passengers, their inability to speak English, the responses they give to officers' questions, the nature of the vehicle, and indications that it may be heavily loaded. All of these factors properly may be taken into account in deciding whether there is probable cause to search a particular vehicle. In addition, as we note today in *United States* v. *Brignoni-Ponce*, *ante*, p. —, the officers are entitled to draw reasonable inferences from these facts in light of their knowledge of the area and their prior experience with aliens and smugglers. In this case, however, the officers advanced no special reasons for believing respondent's vehicle contained aliens. The absence of probable cause makes the search invalid.

II

The Government also contends that even if *Almeida-Sanchez* applies to checkpoint searches, the Court of Appeals erred in voiding this search because it occurred after the date of decision in *Almeida-Sanchez* but before the Court of Appeals stated in *United States* v. *Bowen*, *supra*, that it would require probable cause for checkpoint searches. Examination of the Government's brief in the Ninth Circuit indicates that it did not raise this question below. On the contrary, it represented to the court that the decision in *Bowen* would be "determinative of the issues in this case." We therefore decline to consider this issue, which was raised for the first time in the petition for certiorari.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 73–2050

United States, Petitioner, v. Luis Antonio Ortiz.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 30, 1975]

MR. JUSTICE REHNQUIST, concurring.

I joined the dissent of my Brother WHITE in *Almeida-Sanchez* v. *United States*, 413 U. S. 266 (1973), and recognize that the present decision is an extension of the unsound rule announced in that case. I nonetheless join the opinion of the Court, because a majority of the Court still adheres to *Almeida* and because I agree with the Court's analysis of the significance of the Government's proffered distinctions between roving and fixed-checkpoint searches.

I wish to stress, however, that the Court's opinion is confined to full searches, and does not extend to fixed-checkpoint stops for the purpose of inquiring about citizenship. Such stops involve only a modest intrusion, are not likely to be frightening or significantly annoying, are regularized by the fixed situs, and effectively serve the important national interest in controlling illegal entry. I do not regard such stops as unreasonable under the Fourth Amendment, whether or not accompanied by "reasonable suspicion" that a particular vehicle is involved in immigration violations, cf. *United States* v. *Brignoni-Ponce*, *ante*, and I do not understand today's opnion to cast doubt upon their constitutionality.